

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMEL BARNES,)	
)	
Plaintiff,)	
)	
v.)	No. 17-cv-07358
)	
ARYZTA, LLC,)	
)	
Defendant.)	

**DEFENDANT’S MOTION TO WITHDRAW ITS MOTION TO RECONSIDER
THE COURT’S ORDER AWARDING FEES PURSUANT TO 28 U.S.C. § 1447(c),
AND TO PROCEED WITH COMPLIANCE WITH LOCAL RULE 54.3
OR OTHER DETERMINATION AS TO THE AMOUNT TO BE AWARDED**

Defendant, ARYZTA LLC, through its attorneys, O’Hagan Meyer, LLC, hereby moves to withdraw its previously filed motion for reconsideration of this Court’s Memorandum Opinion and Order of December 20, 2017, awarding Plaintiff, Jamel Barnes, attorneys’ fees and costs pursuant to 28 U.S.C. § 1447(c) (“the Order”), and respectfully requests that this Court order the parties to proceed pursuant to Local Rule 54.3 with respect to the preparation and submission of a fee petition in order for this Court to determine the amount of attorneys’ fees and costs to be awarded to Plaintiff as a result of this Court’s Order. In further support thereof, Defendant states as follows:

1. On December 20, 2017, this Court granted Plaintiff’s motion to remand this matter back to the Circuit Court of Cook County. (Doc. 39). The Court further awarded Plaintiff attorneys’ fees and costs pursuant to 28 U.S.C § 1447(c), although Defendant was not provided with an opportunity to object to the fees and costs sought within Plaintiff’s reply brief, and the Court did not set forth the amount to be awarded. (*Id.*).

2. As a result of the unclear finality of the Court’s Order and out of an abundance of

caution, Defendant filed a notice of appeal to the Seventh Circuit, although that appeal has now been voluntarily dismissed. (Docs. 53, 54). Defendant alternatively sought the Court's reconsideration of its Order, or clarification and further instruction with respect to the fee award. (Doc. 49).

3. The Court agreed to entertain Defendant's motion and entered into a briefing schedule on the merits of the fee award before the parties are to make the necessary exchanges of information and submit a joint fee petition pursuant to Local Rule 54.3. (Doc. 52).

4. Plaintiff's response to the motion to reconsider is currently due on March 1, 2018. (*Id.*).

5. While Defendant continues to believe that the motion to reconsider has merit, in light of the risk that further proceedings before this Court continue to increase the fee award if affirmed and Defendant's concerns that Plaintiff's counsel continues to engage in excessive and unnecessary work to inflate its claim for fees and costs, Defendant wishes to withdraw its request for reconsideration of the merits of the fee award and move forward with a determination as to the amount of fees to be awarded pursuant to the framework set forth within Local Rule 54.3, or any other proceedings that this Court may order.¹

6. As Plaintiff no longer needs to defend the merits of the award and can seek to recover all fees and costs to date pursuant to 28 U.S.C. § 1447(c) and applicable case law within the Seventh Circuit, and any such amounts would nonetheless be subject to the Court's later determination under Rule 54 and Local Rule 54.3, Plaintiff will not be prejudiced by the withdrawal of Defendant's motion and such withdrawal will speed up rather than delay any further proceedings before this Court.

¹Defendant in no way concedes that the fee award was proper and does not hereby waive any future challenge to the merits of the fee award on appeal once the amount of the award is finalized.

WHEREFORE, Defendant, ARYZTA LLC, respectfully requests that this Court enter an Order withdrawing Defendant's previously filed motion to reconsider the fee award of December 20, 2017, permitting the parties to proceed under Local Rule 54.3 or otherwise exchanging their respective positions as to the attorneys' fees and costs to be awarded and any objections thereto, and providing for any other relief deemed necessary.

Respectfully Submitted,

By: /s/ Jamie L. Filipovic
One of the attorneys for ARYZTA LLC

Kevin M. O'Hagan (ARDC No. 6211446)
Jamie L. Filipovic (ARDC No. 6278943)
Kristen A. Cemate (ARDC No. 6299262)
O'Hagan Meyer, LLC
One East Wacker Drive, Suite 3400
Chicago, Illinois 60601
T: 312.422.6100
F: 312.422.6110
kohagan@ohaganmeyer.com
jfilipovic@ohaganmeyer.com
kcemate@ohaganmeyer.com

CERTIFICATE OF SERVICE

This is to certify that on the **16th day of February, 2018**, I, Jamie L. Filipovic, an attorney of record, electronically filed the foregoing *Defendant's Motion to Withdraw Its Motion to Reconsider the Court's Order Awarding Fees Pursuant to 28 U.S.C. § 1447(c), and to Proceed with Compliance with Local Rule 54.3 or Other Determination as to the Amount to be Awarded*, using the CM/ECF system, pursuant to the General Order on Electronic Case Filing and in compliance with Local Rules 5.2(a) and 5.5, which will effectuate service upon all counsel of record at the following email addresses:

David J. Fish, dfish@fishlawfirm.com, admin@fishlawfirm.com,
sanders@fishlawfirm.com

Kimberly A. Hilton, khilton@fishlawfirm.com, admin@fishlawfirm.com,
sanders@fishlawfirm.com

John C. Kunze, jkunze@fishlawfirm.com

The Fish Law Firm, P.C.
200 East Fifth Avenue, Suite 123
Naperville, Illinois 60563

Sydney M. Janzen, sjanzen@edelson.com

Todd M. Logan, tlogan@edelson.com

Benjamin Harris Richman, brichman@edelson.com, docket@edelson.com

J. Eli Wade Scott, ewadescott@edelson.com, docket@edelson.com

Edelson P.C.
350 North LaSalle Street, 13th Floor
Chicago, Illinois 60654

By: /s/ Jamie F. Filipovic
One of the attorneys for ARYZTA LLC

Kevin M. O'Hagan (ARDC No. 6211446)
Jamie L. Filipovic (ARDC No. 6278943)
Kristen A. Cemate (ARDC No. 6299262)
O'Hagan Meyer, LLC
One East Wacker Drive, Suite 3400
Chicago, Illinois 60601
T: 312.422.6100
F: 312.422.6110
kohagan@ohaganmeyer.com
jfilipovic@ohaganmeyer.com
kcemate@ohaganmeyer.com